

Real Estate Board

Regulatory Review Checklist Explanation Sheet - (Pre-NOIRA)

Time-Share Rules and Regulations

Item 1: Specific reasons for the proposed regulations.

The Time-Share Act (§ 55-360 et seq. of the Code of Virginia) was established by Acts of the 1981 General Assembly (chapter 462) and assigned to the Real Estate Board for administration and support. The Time-Share Act was established in order to provide protection to those consumers within the Commonwealth who wished to purchase or utilize a Time-Share project. The Act has undergone eleven amendments since its inception, including seven since the current regulations were promulgated. Various sections of the regulations are not in compliance with current statutes and a review of these sections is necessary in order to ensure that the regulations are not only supported by the current statutes, but also provide adequate protection to the consumers, while, at the same time, not imposing unnecessary burdens on the regulants.

The NOIRA will solicit public comment in all areas of possible regulation with emphasis on the following areas:

- Review of definitions used in the regulations
- Adequacy of disclosure requirements
- Identification of sections not in compliance with current Code requirements
- Annual reporting requirements
- Consumer protection issues

Item 2: Legal Authority/Mandate.

The Board's authority to promulgate regulations for the administration and support of the Time-Share Act may be found in § 55-396(A) of the Code of Virginia and was effective July 1, 1981. This section of the Code indicates that the Real Estate Board may "adopt,

amend, and repeal rules and regulations and issue orders consistent with and in furtherance of the objectives” set forth in the Act.

Executive Order 25 (1998) requires a periodic review of existing regulations in order to ensure that the regulations provide protection of the health, safety, and welfare to the public, while being the least burdensome to both the citizens and businesses of the Commonwealth.

Item 3: Statement of Essential Nature.

There are currently 63 time-share projects registered with the Real Estate Board actively offering over 130,000 time-share units for sale. Twenty new projects have registered in the last 18 months. Purchasing a time-share may be as easy as reserving a room at a resort for a week long vacation or as complicated as becoming one of many owners of a resort with the attached responsibilities of ownership. Competition between projects is fierce and special offers, gifts, and premiums are offered to potential buyers in an effort to entice them to attend a sales presentation.

These regulations are necessary for the Real Estate Board to continue to administer the Time-Share Act, protecting the welfare of consumers by ensuring that time-share projects comply with the disclosure requirements, advertising restrictions, escrow requirements, and resale regulations.

Item 4: Statement of Alternatives Considered.

The registration of time-share projects and the limited enforcement powers given to the Real Estate Board are the least burdensome types of regulation available to the Real Estate Board and no alternatives have been identified. The Department of Professional and Occupational Regulation and the Real Estate Board will carefully weigh all information coming into its possession with the objective of developing regulations which intrude as little as possible into the conduct of commerce by the regulated community and have the smallest possible adverse impact on the public.

Department of Professional and Occupational Regulation

Real Estate Board

Time-Share Rules and Regulations
Pre-NOIRA Supplemental Information

The primary purpose of the regulatory review of the time-share regulations is to bring them current with the statutes. The following are examples of specific passages being reviewed, but may not be the only passages modified:

18 VAC 135-40-40 directs the Department of Professional and Occupational Regulation to employ a property registration administrator, responsible for “carrying out the routine daily operations of the board with respect to time-share regulations.” There is no statutory authority for this regulation.

18 VAC 135-40-70 outlines administrative procedures in place for the processing of time-share applications. Documented administrative procedures would generally be contained in guidance documents accessible through the Virginia Freedom of Information Act and would not be contained in the board regulations.

18 VAC 135-40-170(D)(1) provides the purchaser a nonwaviable right to cancel the purchase contract for seven calendar days after execution of the purchase contract. § 55-376(A) of the Code of Virginia (amended in 1991 & 1994) clarifies the cancellation right to midnight of the seventh calendar day following the execution of such contract.

18 VAC 135-40-170(D)(2) outlines the requirements of the formation of the time-share owners association and the voting rights and obligations of the owners. 18 VAC 135-40-240 outlines the required information to be provided in the Public Offering Statement concerning the administration of the time-share. § 55-368 of the Code of Virginia (amended in 1994) modified the requirements in place for the creation of the association and certain authority given to the association. This information is required to be provided in the time-share instruments, but not specifically the Public Offering Statement.

§ 55-374 of the Code of Virginia underwent extensive modification with a 1998 amendment and limited modification with a 1999 amendment, this is in addition to amendments made in 1989 and 1994. No review of Part V (Public Offering Statement) of the regulations has been made since the four amendments have been in place.